



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 20, 1993

Ms. Sharon Gillespie  
Assistant General Counsel  
Texas Department of Banking  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

OR93-255

Dear Ms. Gillespie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19187.

The Texas Department of Banking (the "department") has received a request for copies of the original application for license to operate and the most recent application for license renewal filed by ABN AMRO BANK, N.V. You advise us that most of the requested information has been made available to the requestor. You object, however, to release of the remaining information, which consists of an estimate of the bank's future income. You claim that this information is excepted from required public disclosure by sections 3(a)(1), 3(a)(10), and 3(a)(12) of the Open Records Act.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure information deemed confidential by statutory law. Subsection (a) of article 342-210, V.T.C.S., of the Texas Banking Code provides in part that

all information obtained, either directly or indirectly, by the Banking Department relative to the financial condition of any bank or bank holding company *other than call reports and profit and loss statements*, whether obtained through examination or otherwise, *except published statements*, and all files and records of said Department relative thereto shall be confidential, and shall not be disclosed by the Banking Commissioner or any officer or employee of said Department. [Emphasis added].

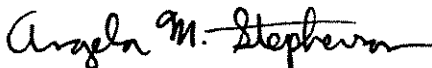
The requested information is information obtained by the department and concerns the financial condition of a bank. Whether article 342-210 deems this information confidential depends on whether the information is within one of that provision's exceptions to confidentiality.

Article 342-209 requires the Banking Commissioner to "call upon each state bank four times each year to make and publish a statement of its financial condition." Because the information at issue here is clearly not part of the bank's financial statement published pursuant to article 342-209, the information is not within the exception to confidentiality in article 342-210 for "call statements."

We turn next to the exception from confidentiality in article 342-209 for "profit and loss statements." The phrase "profit and loss statement" is not defined by article 342-210 or by any other provision of the Texas Banking Code. Consequently, we must interpret the phrase according to its commonly understood meaning. Gov't Code §§ 311.01, 312.002. The phrase "profit and loss statement" is generally defined as a financial statement "showing the income, costs and expenses of a business over a specific period of time." See BLACK'S LAW DICTIONARY 763, 1211 (6th ed. 1990) (defining income statement and profit and loss statement similarly); WEBSTER'S THIRD NEW INT'L DICTIONARY 1143, 1811 (1969) (also defining income statement and profit and loss statement similarly). As commonly defined this phrase does not encompass a general estimate of future earnings, and consequently, we conclude that the requested information is not within the scope of the exception from confidentiality provided "profit and loss statements."

In summary, the requested information is confidential and must be withheld under section 3(a)(1) of the Open Records Act pursuant to article 342-210 of the Banking Code, as that article's exclusions from confidentiality are not applicable here. Because we conclude that section 3(a)(1) excepts the requested information from disclosure, we need not consider the other arguments you have raised. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson  
Assistant Attorney General  
Opinion Committee

AMS/GCK/le

Ref: ID# 19187  
ID# 19433

cc: Lee Hamel  
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